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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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10 I.N., a minor, by and through her mother and
11 *Guardian ad Litem*, Zarinah F., and
12 J.B., a minor, by and through his mother
and *Guardian ad Litem*, Alisa B.,

No. C 18-03099 WHA

13 Plaintiffs,

14 v.

**ORDER RE MOTION
TO DISMISS**

15 JENNIFER KENT, Director of the Department
16 of Health Care Services, and State of California
17 DEPARTMENT OF HEALTH CARE
SERVICES,

Defendants.

INTRODUCTION

20 In this putative class action under the Medicaid Act and other federal statutes,
21 defendants move to dismiss the complaint. For the reasons below, the motion is **DENIED**.

STATEMENT

22 Suing through their parents, plaintiffs I.N. and J.B. — who are seven and five years old,
23 respectively — have significant physical disabilities. Plaintiffs receive benefits under Medi-
24 Cal, California’s Medicaid Act program. Defendants California Department of Health Care
25 Services and DHCS Director Jennifer Kent, who operate Medi-Cal, authorized plaintiffs’
26 receipt of in-home nursing services. According to the complaint, plaintiffs risk health crises
27 and placement in an institutional setting absent in-home nursing (Amd. Compl. ¶¶ 1–2, 15–16,
28 104–06, 125–27).

1 I.N. has resided with her adoptive family since infancy. Her father worked as a
2 firefighter and her mother was the primary caregiver for I.N. and four other children. She has
3 required total assistance for all activities of daily living. Defendants authorized I.N. to receive
4 56 hours of in-home nursing services per week. Nevertheless, I.N. has received fewer hours of
5 services than authorized. Missed nursing shifts occurred for a variety of reasons, including
6 illness, vacation, nurses being assigned to multiple cases, or because I.N.’s parents could not
7 find additional nurses who would accept her as a patient. Over the past year and a half, I.N. has
8 experienced a shortfall of approximately ten percent of her authorized hours (*id.* ¶¶ 84–106).

9 J.B.’s mother was an Engineer Corps Officer in the Navy before J.B. was born but has
10 since stayed home to care for J.B. His father worked as a project manager/engineer with the
11 Army Corps of Engineers. J.B. has also required assistance with all activities of daily living.
12 Defendants authorized him to receive 135 hours of in-home nursing per week and two hours of
13 monthly RN case management. J.B. has nonetheless experienced a fifty-percent shortfall in
14 such hours for most of his life. Like I.N., J.B.’s parents have been unable to find nurses to staff
15 all of J.B.’s authorized hours (*id.* ¶¶ 107–27).

16 Defendants knew that plaintiffs were not receiving their authorized amounts of
17 medically-necessary in-home nursing yet failed to arrange for such services or assist their
18 families in seeking such services. Rather, defendants merely provided families with outdated
19 referral lists of home health agencies and independent nurse providers. These lists often
20 included providers outside of the relevant geographic area and some who did not even accept
21 Medi-Cal (*id.* ¶¶ 15–16, 93–105, 114–124).

22 Plaintiffs initiated this action in May 2018. An order granted plaintiffs’ application to
23 appoint their mothers as their *guardian ad litem*. Plaintiffs filed an amended complaint in
24 August 2018, asserting claims for: (1) violation of the Medicaid Act’s EPSDT provisions; (2)
25 violation of the Medicaid Act’s reasonable promptness requirement; (3) violation of the
26 Americans with Disabilities Act; and (4) violation of Section 504 of the Rehabilitation Act.
27 Defendants now move to dismiss the amended complaint for lack of subject-matter jurisdiction
28 (Dkt. Nos. 1, 31, 45, 51). This order follows full briefing and oral argument.

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ANALYSIS

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1. THE MEDICAID ACT.

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Because plaintiffs' claims stem from their status as Medi-Cal beneficiaries, a review of the statutory framework is helpful. Medicaid is a cooperative federal-state program that directs federal funding to states to assist them in providing medical assistance to low-income individuals. 42 U.S.C. § 1396. The purpose of the Medicaid program is to enable states to furnish, as far as practicable, "medical assistance on behalf of . . . aged, blind or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services," and "to help such families and individuals attain or retain capability for independence or self-care . . ." 42 U.S.C. § 1396-1. Once a state enters the program, the state must comply with the Medicaid Act and its implementing regulations. *Katie A., ex rel. Ludin v. Los Angeles Cty.*, 481 F.3d 1150, 1154 (9th Cir. 2007) (citation omitted). California has elected to participate in and receive federal funding through the Medicaid program. California's Medicaid program, called "Medi-Cal," is codified in the California Welfare & Institutions Code. States participating in Medicaid must designate a single state agency to administer and supervise the program and ensure compliance with the law. 42 U.S.C. § 1396a(a)(5). Here, DHCS is that designated agency. CAL. WELF. & INST. CODE § 14100.1.

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Medi-Cal does not provide health services directly to beneficiaries. Nor does it provide beneficiaries with money to purchase health-care services directly. Rather, DHCS contracts with and reimburses participating providers — such as home health agencies and independent nursing providers — for services. One aspect of the Medicaid program is known as the Early and Periodic Screening, Diagnostic, and Treatment program ("EPSDT"). "California, like all other states participating in Medicaid, is required to provide EPSDT care to eligible children under the age of 21." *Katie A.*, 481 F.3d at 1154. Defendants therefore "must provide all of the services listed in § 1396d(a) to eligible children when such services are found to be medically necessary." *Ibid.* Section 1396d(a), in turn, contains a list of twenty-eight categories of care or services, including "private duty nursing services." 42 U.S.C. §§ 1396d(a)(8). Defendants must also furnish services "with reasonable promptness." 42 U.S.C. § 1396a(a)(8).

1 The amended complaint generally alleges that defendants have failed to arrange for such
2 nursing services for plaintiffs. With this background in mind, this order now turns to
3 defendants' argument that plaintiffs lack Article III standing to bring their claims.

4 **2. ARTICLE III STANDING.**

5 Lack of Article III standing requires dismissal for lack of subject-matter jurisdiction
6 under FRCP 12(b)(1). *Simmonds v. Credit Suisse Sec.*, 638 F.3d 1072, 1087 n.6 (9th Cir. 2011).
7 To establish standing, Article III of our United States Constitution requires plaintiffs to show
8 that they "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of
9 the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo,*
10 *Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S.
11 555, 560–61 (1992)). For purposes of ruling on a motion to dismiss for lack of standing, all
12 well-pled material allegations of the complaint are accepted as true and the complaint must be
13 construed in favor of the complaining party. *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

14 Defendants do not dispute that plaintiffs have alleged an injury in fact. Rather,
15 defendants argue the complaint fails to allege facts plausibly suggesting that plaintiffs' injuries
16 are fairly traceable to defendants or that plaintiffs' injuries would be redressed by a favorable
17 ruling.

18 **A. Causation.**

19 Defendants primarily argue that plaintiffs' grievance — insufficient hours of in-home
20 nursing — is due to the actions or inactions of independent third parties rather than defendants'
21 own misconduct. Although defendants acknowledge that the Medicaid Act requires them to
22 "arrange for (directly or through referral to appropriate agencies, organizations, or individuals)"
23 in-home nursing for plaintiffs, they argue that they meet this requirement by contracting with
24 service providers and supplying checks to pay them (Br. at 5). Because those third parties then
25 provide the allegedly deficient services, defendants argue, plaintiffs fail to establish that
26 defendants are the cause of their injury.

27 Defendants cannot be blamed for a shortage of nurses in California but the complaint
28 alleges more than that. It alleges that defendants have consistently failed to arrange for

1 medically-necessary nursing services despite there being qualified in-home shift nursing care
2 providers in plaintiffs' geographic areas. Plaintiffs also suggest ways in which defendants
3 could attempt to meet this obligation. For example, plaintiffs allege that defendants contribute
4 to the shortfall in plaintiffs' nursing hours by providing insufficient case management and
5 giving plaintiffs' families inaccurate and out-of-date referral lists, "thereby placing the burden
6 on families to find medically necessary in-home nursing services and navigate a complex
7 system with little to no support in obtaining necessary services for their children" (Amd.
8 Compl. ¶ 70).

9 Defendants' repeated objections that the shortfall in plaintiffs' hours is due to third
10 parties or a shortage of nurses in California are unavailing at the pleading stage, where all
11 material allegations in plaintiffs' complaint must be accepted as true. *Warth*, 422 U.S. at 501.
12 To be sure, the purpose of the Medicaid program is to furnish medical assistance "as far as
13 practicable" to eligible individuals. 42 U.S.C. § 1396-1. As alleged in the complaint, however,
14 there are qualified in-home shift nursing care providers in plaintiffs' geographic areas but
15 defendants steer plaintiffs away from resources actually available via outdated lists of providers
16 (Amd. Compl. ¶¶ 92, 111). "Even if a state delegates the responsibility to provide treatment to
17 other entities such as local agencies or managed care organizations, the ultimate responsibility
18 to ensure treatment remains with the state." *Katie A.*, 481 F.3d at 1159. Plaintiffs' allegations
19 therefore satisfy the causation prong.¹

20 **B. Redressibility.**

21 To establish redressability, plaintiffs must allege clear and specific facts showing that it
22 is likely that the relief sought will remedy plaintiffs' injury. *Lujan*, 504 U.S. at 560–61.
23 Plaintiffs, however, "need not show that a favorable decision will relieve [their] every injury."
24 *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007). Plaintiffs here seek a declaratory judgment
25 that defendants are failing to comply with the requirements of the Medicaid Act, the Americans
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27 ¹ Defendants mischaracterize the complaint in their contention that plaintiffs assert a "Section 10(A) claim" for
28 failure to provide case management services. This is not a stand-alone claim in the amended complaint. Rather, plaintiffs
allege that defendants' failure to provide case management services contributes to their overall failure to provide in-home
shift nursing services (Amd. Compl. ¶¶ 128–131).

1 with Disabilities Act, and the Rehabilitation Act. Plaintiffs also seek injunctive relief requiring
2 defendants “to arrange directly or through referral to appropriate agencies, organizations, or
3 individuals” in-home shift nursing for plaintiffs. Defendants argue that this request fails to
4 specify the type of relief that would redress plaintiffs’ injury. Defendants appear to conflate the
5 standard for the issuance of an injunction with the standard for surviving a motion to dismiss.

6 To survive a motion to dismiss for lack of constitutional standing, plaintiffs need only
7 establish a “line of causation” between defendants’ actions and their alleged harm that is more
8 than “attenuated.” *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011) (quoting *Allen v.*
9 *Wright*, 468 U.S. 737, 757 (1984)). As discussed above, such a line of causation is established
10 here. A court order might, for example, require defendants to update their referral lists.
11 Contrary to defendants, the exact contours of plaintiffs’ requested relief need not be determined
12 at the pleading stage. Plaintiffs therefore have Article III standing to bring their claims.

13 This order does not accept the idea that California should be blamed for a shortage of
14 nurses in the state. This order *does* accept that defendants have a statutory obligation to, “as far
15 as practicable,” “arrange for (directly or through referral to appropriate agencies, organizations,
16 or individuals) corrective treatment” for plaintiffs. 42 U.S.C. §§ 1396-1, 1396a(a)(43)(C).
17 Based on the allegations in the amended complaint, it is plausible that defendants have not done
18 all that the statute requires such that plaintiffs have been denied complete benefits. Discovery
19 into how defendants manage the program may reveal that the fault lies with the bureaucracy and
20 is curable rather than simply being a shortage of nurses in California. At this stage, it is too
21 early to toss the case out.

22 CONCLUSION

23 For the reasons explained above, defendants’ motion to dismiss for lack of subject-
24 matter jurisdiction is **DENIED**. Counsel are well-advised to take discovery and to adhere to the
25 case management schedule. Extensions will rarely be granted.

26 IT IS SO ORDERED.

27 Dated: October 10, 2018.


28 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE